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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 837,183	04 18 2001	Charles A. Sellers	COMP:0210	1203

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Ralph A. Graham  
Fletcher, Yoder & Van Someren  
P.O. Box 692289  
Houston, TX 77269-2289

EXAMINER

VORTMAN, ANATOLY

ART UNIT	PAPER NUMBER
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2835

DATE MAILED: 05/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/837,183

Applicant(s)

SELLERS, CHARLES A.

Examiner

Anatoly Vortman

Art Unit

2835

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2003 (RCE).
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 19-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 April 2001 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Amendments*

1. By amendment filed on 03/31/03 (paper # 5), the Applicant has amended independent claims 1, 10, and 17 and dependent claims 4, 7, and 11. Claim 18 has been cancelled. Thus, claims 1-17 and 19-21 are pending in the instant application.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-17 and 19-21, are rejected under 35 U.S.C. 102(b) as being anticipated by US/4,781,422 to Kimble.

Regarding claims 1, 2, and 8, Kimble disclosed (Fig. 1-3) a computer system (10), comprising:

a base (11); a display enclosure (14-16) housing a display (13); and a securing mechanism (17, 18) to pivotably secure the display enclosure (14-16) to the base (11), comprising:

a positioning assembly (29) that produces a frictional force to prevent the display enclosure (14) from pivoting; and a selectively and mechanically actuated operator (75, 85), the operator (75,

85) being adapted to selectively (i.e. when a user so desires) remove the force preventing the display enclosure (14-16) from pivoting. The functional recitation: "operator being adapted to...remove the force...without use of a tool (emphasis added)" has not been given patentable weight, because it is narrative in form. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC § 112, 6th paragraph, and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. *In re Fuller*, 1929 C.D. 172; 388 O.G. 279. In the instant case the sufficient structure has not been presented in support of the ability of the device to be adjusted without use of a tool.

Also, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Regarding claims 10 and 14, Kimble disclosed (Fig. 1-3) a clutch assembly (29) for pivotably securing a computer display (14-16) to a computer base (11), comprising:

a first portion (16, 54, 55) to enable the computer display (14) to pivot relative to the computer base unit (11); a second portion (34, 36) to produce a force to oppose pivotal motion of the display (14); and a manually and mechanically actuatable third portion (75) operable to prevent the second portion (34, 36) from opposing pivotal motion of the display (14).

Regarding claim 3, Kimble disclosed that said securing mechanism (18) comprises a first member (55) secured to the display enclosure (14-16), a second member (34) secured to the base (11), and a force producer (80) to drive the first and second members into contact.

Regarding claims 4, 7, and 11, the functional recitation of claim 4 that said "operator is adapted to prevent the force producer from driving the first and second members into contact", the functional recitation of claim 7 that said "operator is adapted to be electrically actuated", and the functional recitation of claim 11, that said "third portion is adapted to be electrically operated" have not been given patentable weight because these recitations are narrative in form. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC § 112, 6th paragraph, and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. *In re Fuller*, 1929 C.D. 172; 388 O.G. 279.

Also, it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Regarding claims 5 and 6, Kimble disclosed that said operator (75, 85) comprises an actuator (85) disposed on the display enclosure (14-16) to enable a user to control the operator (75).

Regarding claim 9, Kimble disclosed that said device (10) is a portable computer (column 1, lines 1+), therefore it inherently comprises a processor.

Regarding claims 12 and 13, Kimble disclosed a biased (by spring (80) fourth portion (85), the fourth portion (85) being manually operable. The functional recitation of claim 12 "to control electrical power to the third portion" and the functional recitation of claim 13 "so as to not supply electrical power to the third portion" has not been given patentable weight because these recitation are narrative in form. In order to be given patentable weight, a functional

recitation must be expressed as a "means" for performing the specified function, as set forth in 35 USC § 112, 6th paragraph, and must be supported by recitation in the claim of **sufficient structure** to warrant the presence of the functional language. *In re Fuller*, 1929 C.D. 172; 388 O.G. 279.

Regarding claims 15 and 16, Kimble disclosed a biased (by spring (80)) fourth portion (85), the fourth portion (85) being manually operable to mechanically operate the third portion (75), wherein the third portion (75) does not prevent the second portion (34, 36) from opposing pivotal motion of the display (14).

Regarding claims 17 and 19-21, the method steps recited in the claims are inherently necessitated by the device structure as disclosed by Kimble.

### ***Response to Arguments***

4. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anatoly Vortman whose telephone number is 703-308-7824. The examiner can normally be reached on 9:30-6:00, Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Darren Schuberg can be reached on 703-308-4815. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3431 for regular communications and 703-305-3432 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1782.

A.V.  
May 21, 2003

A handwritten signature in cursive script, appearing to read 'A. Vortman', followed by a horizontal line.

Anatoly Vortman  
Primary Examiner  
Art Unit 2835